

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Lever Investments Corporation and Conopco, Inc. d/b/a Lever  
Brothers Company

v.

Daniel F. Ponder

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Opposition No. 102,455  
to application Serial No. 74/719,261  
filed on August 23, 1995

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Peter M. Mendelson for Lever Investments Corporation and  
Conopco, Inc. d/b/a Lever Brothers Company.

Samuel D. Littlepage of Dickinson, Wright, Moon, Van Dusen &  
Freeman for Daniel F. Ponder.

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Before Simms, Hanak and Hairston, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Daniel F. Ponder (applicant) seeks to register SUNLITE  
in typed capital letters for a wide array of goods and  
services in four classes (3, 16, 25 and 41) as outlined  
below. The intent-to-use application was filed on August  
23, 1995.

**Skin lotions, essential oils for personal use, sun block preparations in International Class 3;**

**Printed materials, namely, decals, greeting cards, flash cards, posters and newsletters and magazines featuring sun awareness safety topics in International Class 16;**

**Clothing, namely, shirts, pants, sweaters, swimsuits, jackets, hats, and caps in International Class 25;**

**Educational services, namely, conducting seminars and conferences in the field of sun awareness safety and distributing course materials in connection therewith, and development and dissemination of educational materials of others in the field of sun awareness safety in International Class 41.**

On May 23, 1996 Lever Investments Corporation & Conopco, Inc. d/b/a Lever Brothers Company (opposers) filed a notice of opposition alleging that long prior to August 23, 1995, opposers both used and registered the mark SUNLIGHT for dishwashing detergent. Furthermore, opposers alleged that the contemporaneous use of SUNLITE by applicant for its various goods and services and SUNLIGHT by opposers for dishwashing detergent is likely to cause confusion, mistake and deception.

Applicant filed an answer which denied the pertinent allegations of the notice of opposition.

Both parties have filed briefs. Neither party requested a hearing.

The record in this case consists of the depositions (with exhibits) of Thomas McLoughlin (brand manager at opposer Lever Brothers Company for its SUNLIGHT dishwashing detergent) and applicant Daniel F. Ponder. Opposers also made of record by a notice of reliance a certified title and status copy of Registration No. 1,148,608 for the mark SUNLIGHT for "dishwashing detergent." This registration -- in the name of opposer Lever Investments Corporation -- issued on March 24, 1981 with a claimed first use date of April 25, 1979.

In any likelihood of confusion analysis, two key considerations are the similarities of the goods and services and the similarities of the marks. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.").

Considering first the marks, in this case opposers' mark SUNLIGHT and applicant's mark SUNLITE are identical in terms of pronunciation and connotation, and are virtually identical in terms of visual appearance.

Turning to a consideration of opposers' goods and applicant's goods and services, two propositions must be kept in mind. First, when "the marks [of the parties] are

the same or almost so [as is the case here], it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983). See also 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 23:20 at page 23-46 (4<sup>th</sup> ed. 1998).

Second, for the purposes of our likelihood of confusion analysis, applicant's four class application is treated as four separate applications. 2 J. McCarthy, McCarthy on Trademark and Unfair Competition Section 19:56 at page 19-96 (4<sup>th</sup> ed. 1998). That is to say, this Board makes separate determinations as to likelihood of confusion between opposers' mark SUNLIGHT for dishwashing detergents vis-a-vis applicant's mark SUNLITE for (1) skin lotions, essential oils for personal use, sunblock preparation; (2) printed materials; (3) clothing; and (4) educational services.

Considering first applicant's printed materials, clothing and educational services, we find that despite the fact that applicant's mark and opposers' mark are virtually identical, opposers have simply failed to establish that there is any viable relationship between the foregoing goods and services of applicant and opposers' dishwashing detergents. Accordingly, we find that there is no likelihood of confusion resulting from the contemporaneous

use of SUNLIGHT for dishwashing detergents and SUNLITE for printed materials, clothing and educational services. We note that in their main brief, opposers -- in discussing the issue of likelihood of confusion -- singled out for discussion solely applicant's "skin lotions" and "essential oils for personal use." (Opposers' brief pages 13-15). In their reply brief, opposers made the following statement at page 9: "Used as hand cleansers, opposers' SUNLIGHT products are, in their present form, clearly related to or complementary with applicant's skin lotions, essential oils for personal use, and sun block preparations." In neither their main brief nor their reply brief did opposers ever allege that applicant's use of SUNLITE on printed materials, clothing or educational services is likely to cause confusion with opposers' use of SUNLIGHT on dishwashing detergents.

However, opposers have demonstrated a viable relationship between dishwashing detergents and at least some of applicant's class 3 goods (namely, skin lotions) such that contemporaneous use of nearly identical marks on both types of products would result in a likelihood of confusion. To elaborate somewhat, the record reveals that SUNLIGHT dishwashing detergents, like many other brands of dishwashing detergents, come in two basic types. One is for use in automatic dishwashers. The second is for use in

washing dishes by hand. Opposers have used their SUNLIGHT mark in connection with a hand dishwashing detergent continuously since 1979. (Of course, priority of use is not an issue in this proceeding because opposers have properly made of record Registration No. 1,148,608 for SUNLIGHT for "dishwashing detergent.") Hand dishwashing detergents are used not only to wash dishes, but also to wash hands. (McLoughlin dep. 45). Indeed, the practice of utilizing hand dishwashing detergents to wash not only dishes but also hands has become so widespread that a number of major competitors of opposers have introduced into the market products which are labeled both as dishwashing detergents and as for hand soaps. For example, Procter & Gamble markets "DAWN concentrated dishwashing detergent antibacterial hand soap." (Opposers' exhibit 13). In similar fashion, the Colgate-Palmolive Company markets "PALMOLIVE concentrated dishwashing liquid antibacterial hand soap." (Opposers' exhibits 14). Finally, The Dial Corp. markets "DIAL dishwashing detergent and antibacterial hand cleanser." (Opposers' exhibit 15).

Moreover, the record reflects that opposers are considering introducing under the SUNLIGHT mark a similar dual purpose product designed specifically to wash both dishes and hands. See McLoughlin dep. 46, which has now been declassified.

However, even disregarding opposers' future plans, the fact remains that for many years opposers have marketed under the SUNLIGHT mark a product which is used not only to wash dishes, but also to wash hands. As previously noted, one of applicant's class 3 goods are "skin lotions." While applicant testified that "the key purpose" of his skin lotions "would be to protect a person's skin from sun damage" (Ponder dep. 14), the fact remains that, as described in the application, the term "skin lotions" contains no limitation. In other words, the term "skin lotions" contains no limitations as to reasons for typical use (e.g. sun protection, moisturizing etc.); areas of use on the body (e.g. on the hands, on the face etc.) or normal channels of trade. Thus, applicant's chosen description of goods (skin lotions) is broad enough to include lotions which are used on the hands and which are sold in drug stores, grocery stores and all other normal channels of trade for skin lotions in general. Of course, as to channels of trade, dishwashing detergents are also sold in drug stores and grocery stores. (McLoughlin dep. 11).

We find that use of virtually identical trademarks (SUNLIGHT/SUNLITE) on (1) products which are commonly used to wash hands (i.e. hand dishwashing detergents) and on (2) skin lotions which, of course, can be used on the hands, is likely to result in confusion. To be perfectly clear, our

finding of likelihood of confusion under the foregoing circumstances is not contingent upon a finding that opposers' SUNLIGHT mark is famous. Opposers have demonstrated that the SUNLIGHT mark has been in use for nearly two decades; that SUNLIGHT dishwashing detergents constitute over 10 percent of all dishwashing detergents sold in the United States (McLoughlin dep. 28); and that recent annual sales of SUNLIGHT dishwashing detergents have been in excess of \$140 million (McLoughlin dep. 13). The foregoing demonstrates that opposers' SUNLIGHT mark is, if not famous, at least well-known. However, even absent any showing of notoriety for opposers' SUNLIGHT mark, we would find that there exists a likelihood of confusion from the contemporaneous use of SUNLIGHT on dishwashing detergents which are also used to wash hands and SUNLITE on skin lotions which, of course, can be used on hands. Because we have found that applicant's use of SUNLITE on skin lotions would result in a likelihood of confusion, we need not consider whether applicant's use of SUNLITE on its other class 3 goods would also result in a likelihood of confusion. Tuxedo Monopoly v. General Mills, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Decision: The opposition is dismissed as to applicant's "applications" in classes 16, 25 and 41. The opposition is sustained as to applicant's "application" in



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class 3. In due course, a registration for the mark SUNLITE will issue to applicant for his goods in classes 16 and 25 and his services in class 41.

R. L. Simms

E. W. Hanak

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board